

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

KIMCO BIRMINGHAM, LP,	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 3:07-CV-1642-O
	§	
THIRD CREEK LLC, et al.,	§	
Defendants.	§	

**ORDER ADOPTING FINDINGS, CONCLUSION, AND  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Before the Court are the:

1. Findings, Conclusions, and Recommendation of United States Magistrate Judge (Doc. #36) filed July 16, 2008;
2. Trustee's Motion for Entry of Final Judgment (Doc. #42) filed November 10, 2009 (the "Motion");
3. Certificate of Conference (Doc. #44) filed November 12, 2009.

On November 10, 2009, Allan Mendelsohn, the Chapter 7 Trustee ("Trustee") of Plaintiff Kimco Birmingham L.P., and the court-approved assignee of certain claims from Defendants filed a Motion for Entry of Final Judgment (Doc. #42). The Trustee asks the Court to adopt the magistrate judge's recommendations.<sup>1</sup> Specifically, the Trustee asks the Court to confirm an arbitration award of approximately \$3.5 million to Third Creek against Kimco. Including interest, the Trustee asks for a final judgment in the amount of \$3,946,739.85 against Kimco.

---

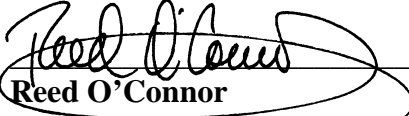
<sup>1</sup>The recommendations were entered on July 16, 2008, and the parties were given ten days to file written objections. *See*, Doc. #36. On the last day to file objections, Kimco filed for Chapter 7 bankruptcy. *See*, Mtn. at 3. Accordingly, this case was placed under an automatic stay. In October 2009, the bankruptcy judge granted the Trustee relief from the stay to seek entry of a final judgment against Kimco. *See, id.* at 4.

The corresponding Certificate of Conference states that the Motion is unopposed. Additionally, No objections have been filed to the magistrate judge's recommendations.

After reviewing all relevant matters of record in this case, including the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, in accordance with 28 U.S.C. § 636(b)(1), the undersigned District Judge is of the opinion that the Findings and Conclusions of the Magistrate Judge are correct and they are **ACCEPTED** as the Findings and Conclusions of the Court. Additionally, Trustee's Motion for Entry of Final Judgment (Doc. #42) should be and is hereby **GRANTED**.

The Court will enter a final judgment consistent with the findings.

**SO ORDERED** this **14th** day of **January, 2010**.

  
Reed O'Connor  
UNITED STATES DISTRICT JUDGE